

Cable  
Text:

C O N F I D E N T I A L NICOSIA 01886

SIPDIS

CX:

ACTION: POL

INFO: CONS TSR PMA ECON DCM AMB RAO FCS PA MGT DAO

DISSEMINATION: POLX /1

CHARGE: PROG

VZCZCAYO256

PP RUEHAK

DE RUEHNC #1886/01 3340931

ZNY CCCCC ZZH

P 300931Z NOV 05

FM AMEMBASSY NICOSIA

TO RUEHC/SECSTATE WASHDC PRIORITY 5184

INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE

RUCNDT/USMISSION USUN NEW YORK 0411

C O N F I D E N T I A L SECTION 01 OF 03 NICOSIA 001886

SIPDIS

E.O. 12958: DECL: 11/29/2015

TAGS: [PREL](#) [CY](#) [TU](#) [PHUM](#) [PREF](#) [COE](#) [ECON](#)

SUBJECT: TURKISH CYPRIOTS UNVEIL NEW SCHEME FOR GREEK  
CYPRIOT PROPERTY CLAIMS

REF: A. NICOSIA 728

[1](#)B. 04 NICOSIA 1869

[1](#)C. NICOSIA 1737

Classified By: CDA Jane Zimmerman, for reasons 1.4 (b) and (d).

[1](#)1. (C) SUMMARY. The Turkish Cypriot administration has drafted a new law that would significantly alter the way in which the "TRNC" handles claims for restitution or compensation for Greek Cypriot property, which makes up between 80 and 90 percent of the land in the north. In response to an April ECHR ruling declaring that the existing Turkish Cypriot Property Commission was not an "effective local remedy" for property claims, the "Council of Ministers" has approved a new scheme it says will establish a more impartial body to grant restitution of Greek Cypriot property in some cases, and more robust compensation in others. The new law, which still requires "parliament's" approval and will take several months to come into force, is an attempt to thwart further ECHR rulings against Turkey and the Turkish Cypriot side -- indirectly gaining the ECHR's stamp of approval for a "TRNC"-sponsored institution and blunting one point of criticism against EU candidate Turkey's implementation of EU human rights law. Ankara has reportedly given its tacit blessing to the new arrangement. But compensation, much less restitution, will be a difficult and costly undertaking and the potential disruption it may cause has already generated criticism from the Turkish Cypriot nationalist right. It is far from certain the new arrangement will meet the ECHR's approval as "effective local remedy." At the very least, however, the Turkish Cypriots are betting that their new law will slow the pace of property cases against them, and perhaps even facilitate settlements with (or buy-outs of) some Greek Cypriot plaintiffs. END SUMMARY.

CHANGES TO THE PROPERTY COMMISSION

[1](#)2. (SBU) On November 22, the Turkish Cypriot "Council of Ministers" published a draft law that would significantly change the way in which the "TRNC" handles Greek Cypriot claims on property in the north. Under article 159 of the

"TRNC Constitution," all Greek Cypriot property in the north was confiscated in exchange for lost Turkish Cypriot land in the south. A large portion of this Greek Cypriot land has since been doled out to Turkish Cypriots, many of whom were given "TRNC" title deeds to the properties they now use as homes, farmland, and places of business. Given estimates that between 80 and 90 percent of the land in the north was owned by Greek Cypriots prior to the 1974 war, this new law could have a significant impact on the use of land in the north -- and on property provisions in any future Cyprus settlement.

13. (U) The new legislation would abolish the "TRNC" Property Commission, which was set up by the Denktash regime in 2003 in response to ECHR property cases brought against Turkey as the "occupying power." Although no Greek Cypriots are known to have filed claims with the Commission, it is theoretically empowered by the "TRNC" to compensate Greek Cypriot owners for their property in the north. Turkey subsequently claimed that, since an "effective" local (i.e. "TRNC") remedy existed to resolve the claims against it, the ECHR should dismiss property cases against it and refer them back to the Turkish Cypriot Property Commission.

14. (U) In April 2005, however, the ECHR ruled in favor of Greek Cypriot plaintiff Xenides-Arestis (refs a and b) and found that the Commission did not constitute a local remedy, because, among other things:

- the Commission could grant only compensation, not restitution, of confiscated property;

- the Commission was empowered to provide compensation for real estate only, not movable property, loss of use, or damages; and

- the Commission members were not impartial (indeed, some lived on Greek Cypriot land).

The ECHR did not, however, rule out the idea that a Turkish Cypriot body could constitute effective local remedy, notwithstanding the non-recognition of the "TRNC," if these deficiencies in the Property Commission were addressed. In fact, in a subsequent (unrelated) ruling over the shooting death of a Greek Cypriot by the Turkish army in the Buffer Zone, the ECHR specifically said that "for the purposes of applying the European Convention on Human Rights," under which Greek Cypriot property complaints are generally filed, "the remedies available in the 'TRNC' could be regarded as domestic remedy."

15. (SBU) With this target in mind, the new Turkish Cypriot legislation envisions the following changes, among others, to the Property Commission:

- the Commission will be empowered to return immediately Greek Cypriot land to applicants who can prove pre-1974 ownership, unless the property is being used by another person, a "TRNC" deed has been issued giving another person rights to the property, or restitution of the land would be a threat to "security" (probably a reference to Greek Cypriot land currently used by the Turkish army);

- in some cases, especially those where "TRNC" deeds have been issued or the land is currently in use, restitution could be possible but would be deferred until after a Cyprus settlement;

- in cases where restitution is unworkable, the applicant may be offered another property of similar value, or monetary compensation based on the 1974 value of the land (adjusted for inflation and for the value of any Turkish Cypriot land the plaintiff has acquired in the south). In some cases compensation for damages (both loss of use and "emotional") will be allowed;

- the Commission will consist of "either 5 or 7 members," two of which will be foreigners (from a country other than

Turkey, Greece, or the UK);

-- the Commission will also be empowered to grant compensation for movable property (such as the contents of homes and stores) lost in 1974;

-- claimants will be allowed to appeal rulings of the Commission to the "TRNC Higher Administrative Court" and then to the ECHR.

The law must now wend its way through legislative committee and then a full floor vote in the "National Assembly" before becoming law. According to one parliamentarian, this will probably take "several more months."

"ECHR COMPLIANT?"

16. (C) The main purpose of this law, according to a Turkish Cypriot "minister" we spoke to privately, was to blunt further ECHR property suits by Greek Cypriots. By establishing a new, "ECHR-compliant" Property Commission, the Turkish side could force Greek Cypriot claims to be adjudicated on the island with "fairness and finality," he told us. He was not certain whether the Turkish side would push the ECHR to rule on the new law by filing an appeal of the Xenides-Arestis decision. But prominent Turkish Cypriot property lawyer Emine Erk suspects "it's too late" to appeal the court's decision in this case, and that the Turkish side will simply wait for another property case (many are pending) to work its way to Strasbourg.

17. (C) Either way, the "minister" told us, if the ECHR determined that the new Commission did constitute an "effective local remedy," it would remove a significant human-rights related stumbling block from Turkey's EU accession process. It is for this reason Turkey "backs the new legislation fully" and, according to the "minister," was already discussing with the "TRNC" the possibility of extending additional grants and loans to cover the costs of administering the Commission and paying for compensation. Ankara, which is already on the hook for compensation arising out of cases such as Xenides-Arestis and Loizidou, would "just as soon pay out" via the "TRNC" and not directly, he said.

18. (C) From the Turkish Cypriot perspective, the "minister" noted, a favorable judgment on the new Commission would have the added benefit of giving an international seal of approval to a Turkish-Cypriot sponsored institution. "We don't want political recognition," he said, but "we want to the world to recognize we are here" and to deal with the Turkish Cypriots "on practical matters."

OBSTACLES TO IMPLEMENTATION

19. (C) But there are several factors that complicate the "government's" plans. The first is domestic politics. While the ruling CTP has a strong position in the legislature, passage of this controversial law is not guaranteed. Property is a very emotive issue; strong political resistance last fall forced the CTP to withdraw a previous proposal limiting the sale of land in the north to foreign developers. The new law has excited similarly vigorous opposition.

110. (SBU) Nationalist icon and "TRNC" founder Rauf Denktash has already spoken out against the new legislation, which he says would leave Turkish Cypriots without anywhere to live. Meanwhile, "MPs" from the opposition UBP -- as well as backbenchers from within the DP of Serdar Denktash (CTP's junior coalition partner) -- have expressed outrage over a law that would give away land to the Greek Cypriots without a final Cyprus settlement. Observers note the coalition party discipline is high, and expect the law to pass -- but wonder if the opposition or public anger could force the CTP to water down key provisions of the bill, making it less likely the ECHR would agree that the new law is "effective" local

remedy.

¶11. (C) Even without changes, it is far from certain the ECHR would bless the new Property Commission scheme. One "TRNC Land Registry" employee estimated that only 3-5 percent of Greek Cypriot property in the north is undistributed and unused, and therefore liable for immediate restitution under the draft scheme. It remains to be seen whether the ECHR will agree that restitution of such a small amount of property (or delayed restitution, which is also envisioned in the law) indeed constitutes effective, meaningful redress for Greek Cypriots plaintiffs.

¶12. (C) Finally, it is not clear how many (if any) of those Greek Cypriots offered compensation instead of restitution under the new plan would accept it. Assuming the "TRNC" can find the cash to offer compensation, some individuals might take the money and run, as the Turkish Cypriots hope. But the ROC's strong official position against dealing with the "occupation regime" is certain to encourage many Greek Cypriot plaintiffs to stick to their principled stance, appealing decisions of the new Commission and pushing for total and immediate restitution in the courts.

COMMENT

-----

¶13. (C) Even if the new law does not work out as the "TRNC" leadership hopes, it could nonetheless have the effect of slowing down the numerous property cases pending against Turkey at the ECHR. Furthermore, what appears to be an honest attempt to respond to the concerns outlined by the ECHR in Xenides-Arestis may also, at least temporarily, ease some of the criticism Turkey faces over its spotty implementation of European human rights law. Meanwhile, Turkish Cypriot plaintiffs continue their own cases against the ROC's uncompensated use of their land in the south (ref c). The ongoing two-way battle of litigation threatens not only to create an increasingly large body of jurisprudence that will complicate the property provisions of any final settlement deal -- it also makes the atmosphere of bicomunal trust needed for a final agreement even harder to imagine.

END COMMENT.

ZIMMERMAN